

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

THOMAS DAVIS,

Plaintiff,

v.

DIOCESE OF BROOKLYN a/k/a  
THE ROMAN CATHOLIC  
DIOCESE OF BROOKLYN, NEW  
YORK; ST. MICHAEL a/k/a ST.  
MICHAEL'S CHURCH;  
MONSIGNOR OTTO L. GARCIA;  
and DOES 1-5 whose identities are  
unknown to Plaintiff,

Defendants.

Index No. \_\_\_\_\_

**SUMMONS**

**TO THE ABOVE NAMED DEFENDANTS:**

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: August 14, 2019  
New York, New York

/s/ Jeffrey R. Anderson  
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J. Michael Reck  
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**COMPLAINT  
AND DEMAND  
FOR JURY TRIAL**

From approximately the years of 1973 through 1975, Monsignor Otto Garcia ("Msgr. Garcia") sexually abused Plaintiff as a child. While the abuse occurred, Defendants were generally negligent, they negligently employed Defendant Msgr. Garcia, and gave him access to children, including Plaintiff. This lawsuit arises out of Plaintiff's significant damages from that sexual abuse, described below. Plaintiff, by and through Plaintiff's attorneys, states and alleges as follows:

**PARTIES**

**A. Plaintiff**

1. At all times material to this Complaint, Plaintiff was a student, parishioner, and altar boy at Defendant St. Michael a/k/a St. Michael's Church in Flushing, New York. At all times material, Plaintiff resided in the State of New York.

**B. Defendants**

2 Whenever reference is made to any Defendant entity, such reference includes that entity, its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

3 At all times material, Defendant Diocese of Brooklyn a/k/a The Roman Catholic Diocese of Brooklyn, New York ("Diocese") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 310 Prospect Park West, Brooklyn, NY 11215.

4 The Diocese was created in approximately 1853. Later, the Diocese created a corporation called The Roman Catholic Diocese of Brooklyn, New York to conduct some of its affairs. The Diocese operates its affairs as both a corporate entity and as the organization known as the Diocese of Brooklyn. Both of these entities and all other affiliated corporations and entities controlled by the Bishop are included in this Complaint as the "Diocese." The Diocese functions as a business by engaging in numerous revenue producing activities and soliciting money from its members in exchange for its services.

5. The Diocese has several programs that seek out the participation of children including, but not limited to, schools and other educational programs. The Diocese, through its officials, has complete control over those activities and programs involving children. The Diocese has the power to appoint, train, supervise, monitor, remove, and terminate each and every person working with children within the Diocese.

6. At all times material, Defendant St. Michael a/k/a St. Michael's Church ("Parish") was and continues to be an organization authorized to conduct business and conducting business in the State of New York, with its principal place of business at 136-76 41st Avenue, Flushing, NY 11355. St. Michael's includes, but is not limited to, the St. Michael corporation any other organizations and/or entities operating under the same or similar name with the same or similar principal place of business.

7. At all times material, Defendant St. Michael was and continues to be under the direct authority, control, and province of Defendant Diocese and the Bishop of Defendant Diocese. Defendant St. Michael includes any school affiliated with St. Michael, including but not limited to St. Michael's Catholic Academy with its principal place of business at 136-58 41st Avenue, Flushing, NY 11355. At all times material, St. Michael school was under the direct authority, control, and province of Defendant St. Michael and the Diocese and the Bishop of Defendant Diocese. At all times material, Defendants St. Michael and Diocese owned, operated, managed, maintained, and controlled St. Michael and St. Michael school.

8. At all times material, Defendant Msgr. Garcia was and continues to be a Roman Catholic priest under the employee and control of Diocese and all Defendants.

9. For purposes of this Complaint, Defendants Diocese and Parish are referred to collectively as “the Institutional Defendants.”

10. Defendants Does 1 through 5 are unknown agents whose identities will be provided when they become known pursuant to C.P.L.R. § 1024.

### **JURISDICTION**

11. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendants’ principal places of business are in New York and because the unlawful conduct complained of herein occurred in New York.

12. Venue is proper pursuant to C.P.L.R. § 503 in that Kings County is the principal place of business of Defendant Diocese. In addition, many of the events giving rise to this action occurred in Kings County.

### **FACTUAL ALLEGATIONS**

#### **A. Background**

13. The hierarchy of the Roman Catholic Church and, by implication these Defendants, have been aware of the serious problem of clergy sexual abuse of children since at least the 1800s.

14. Further, Roman Catholic Church officials, including these Defendants, have used their power and influence to prevent victims and their families from disclosing allegations of abuse.

15. Additionally, Plaintiff’s relationship to the Institutional Defendants and Defendant Msgr. Garcia, as a vulnerable child, student, and parishioner at Parish was one in which Plaintiff was subject to the ongoing influence of the Institutional Defendants

and Msgr. Garcia, Plaintiff's abuser.

**B. Specific Allegations**

16. At all times material, Defendant Msgr. Garcia was a Roman Catholic cleric employed by the Diocese and St. Michael. Msgr. Garcia remained under the direct supervision, employ, and control of Defendants.

17. The Institutional Defendants placed Defendant Msgr. Garcia in positions where he had access to and worked with children as an integral part of his work.

18. Plaintiff was raised in a devout Roman Catholic family and attended Parish in Flushing, in the Diocese. Plaintiff and Plaintiff's family came in contact with Defendant Msgr. Garcia as an agent and representative of Defendants, and at Parish.

19. Plaintiff, as a youth, participated in activities at Parish. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church, including the Institutional Defendants and their agents, including Msgr. Garcia. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on the Institutional Defendants and Msgr. Garcia. Defendants had custody of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

20. From approximately 1973 to 1975, when Plaintiff was approximately 14 to 16 years old, Defendant Msgr. Garcia engaged in unpermitted sexual contact with Plaintiff.

**COUNT I: SEXUAL BATTERY AGAINST DEFENDANT MSGR. GARCIA**

21. Plaintiff realleges paragraphs 1-20 above.

22. In and around 1973 to 1975, Defendant Msgr. Garcia intentionally inflicted unpermitted, harmful and offensive bodily, sexual contact upon the person of Plaintiff.

23. Plaintiff did not consent to the harmful bodily contact.

24. As a direct and proximate result of the foregoing, Plaintiff sustained physical, emotional and psychological injuries, along with pain and suffering.

25. As a result of the foregoing, Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**COUNT II: NEGLIGENCE AGAINST THE INSTITUTIONAL DEFENDANTS**

26. Plaintiff realleges paragraphs 1-25 above.

27. Each Institutional Defendant owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

28. Each Institutional Defendant owed Plaintiff a duty of care because each Institutional Defendant had a special relationship with Plaintiff.

29. Each Institutional Defendant also had a duty arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children in the Diocese of Brooklyn to properly train and supervise its clerics. This special relationship arose because of the high degree of vulnerability of the children entrusted to their care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Institutional Defendants had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves.



30. Each Institutional Defendant owed Plaintiff a duty to protect Plaintiff from harm because each Institutional Defendant also had a special relationship with Msgr. Garcia.

31. Each Institutional Defendant owed Plaintiff a duty of reasonable care because they solicited youth and parents for participation in their youth programs; encouraged youth and parents to have the youth participate in their programs; undertook custody of minor children, including Plaintiff; promoted their facilities and programs as being safe for children; held their agents, including Defendant Msgr. Garcia, out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents, including Defendant Msgr. Garcia, to spend time with, interact with, and recruit children.

32. By accepting custody of the minor Plaintiff, the Institutional Defendants established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury. Further, the Institutional Defendants entered into a fiduciary relationship with Plaintiff by undertaking the custody, supervision of, and/or care of the minor Plaintiff. As a result of Plaintiff being a minor, and by Institutional Defendants undertaking the care and guidance of the Plaintiff, the Institutional Defendants also held a position of empowerment over Plaintiff. Further, the Institutional Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. The Institutional Defendants, through its employees, exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

33. By establishing and/or operating the Diocese and Parish, accepting the minor Plaintiff as a participant in their programs, holding their facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, the Institutional Defendants entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who participated in their programs. Institutional Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Institutional Defendants had the duty to exercise the same degree of care over minors under their control as a reasonably prudent person would have exercised under similar circumstances.

34. By establishing and operating the Diocese and Parish, which offered educational programs to children and which may have included a school, and by accepting the enrollment and participation of the minor Plaintiff as a participant in those educational programs, the Institutional Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

35. Each Institutional Defendant owed Plaintiff a duty to protect Plaintiff from harm because the Institutional Defendants invited Plaintiff onto their property and Defendant Msgr. Garcia posed a dangerous condition on Institutional Defendants' property.

36. Each Institutional Defendant breached its duties to Plaintiff. The Institutional Defendants failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had sufficient information to represent their

facilities as safe. The Institutional Defendants' breach of their duties include, but are not limited to: failure to protect Plaintiff from a known danger, failure to have sufficient policies and procedures in place to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to ensure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child molestation, failure to properly train the employees at institutions and programs within the Institutional Defendants' geographical confines, failure to train the minors within the Institutional Defendants' geographical confines about the dangers of sexual abuse by clergy, failure to have any outside agency test their safety procedures, failure to protect the children in their programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train their employees properly to identify signs of child molestation by fellow employees, failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

37. The Institutional Defendants also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Defendant Msgr. Garcia posed and the risks of child sexual abuse in Catholic institutions. They also failed to warn them about any of the knowledge that the Institutional Defendants had about child sexual abuse.

38. The Institutional Defendants additionally violated a legal duty by failing to report known and/or suspected abuse of children by Defendant Msgr. Garcia and/or its other agents to the police and law enforcement.

39. Prior to the sexual abuse of Plaintiff, the Institutional Defendants learned or should have learned that Defendant Msgr. Garcia was not fit to work with children. The Institutional Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Defendant Msgr. Garcia's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, the Institutional Defendants knew or should have known that they did not have sufficient information about whether or not their leaders and people working at Parish and other Catholic institutions within the Diocese of Brooklyn were safe.

40. The Institutional Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Diocese. At the very least, the Institutional Defendants knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in Catholic programs and activities within the Diocese.

41. The Institutional Defendants knew or should have known that Institutional Defendants had numerous agents who had sexually molested children. The Institutional Defendants knew or should have known that child molesters have a high rate of recidivism. They knew or should have known that there was a specific danger of child sex abuse for children participating in their youth programs.

42. However, despite this knowledge, the Institutional Defendants negligently deemed that Defendant Msgr. Garcia was fit to work with children; and/or that any previous suitability problems Defendant Msgr. Garcia had were fixed and cured; and/or that Msgr. Garcia would not sexually molest children; and/or that Msgr. Garcia would not injure children.

43. The Institutional Defendants' actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child participating in the programs and activities the Institutional Defendants offered to minors, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who Defendant Msgr. Garcia had access to through Institutional Defendants' facilities and programs, Plaintiff was a foreseeable victim.

44. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of the Institutional Defendants.

**COUNT III: NEGLIGENT TRAINING AND SUPERVISION OF EMPLOYEES AGAINST THE  
INSTITUTIONAL DEFENDANTS**

45. Plaintiff realleges paragraphs 1-44 above.

46. At all times material, Defendant Msgr. Garcia was employed by the Institutional Defendants and was under each Institutional Defendant's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Defendant Msgr. Garcia engaged in the wrongful conduct while acting in the course and scope of his employment with the Institutional Defendants and/or accomplished the

sexual abuse by virtue of his job-created authority.

47. The Institutional Defendants had a duty, arising from their employment of Defendant Msgr. Garcia, to ensure that he did not sexually molest children.

48. Further, the Institutional Defendants owed a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between clerics and children.

49. The Institutional Defendants were negligent in the training, supervision, and instruction of their employees. The Institutional Defendants failed to timely and properly educate, train, supervise, and/or monitor their agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed. The Institutional Defendants were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Msgr. Garcia and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Msgr. Garcia's sexual abuse of Plaintiff. In failing to properly supervise Msgr. Garcia, and in failing to establish such training procedures for employees and administrators, the Institutional Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

50. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of the Institutional Defendants in the training and/or supervising of its employees.

**COUNT IV: NEGLIGENT RETENTION OF EMPLOYEES AGAINST THE  
INSTITUTIONAL DEFENDANTS**

51. Plaintiff realleges paragraphs 1-50 above.

52. At all times material, Msgr. Garcia was employed by the Institutional Defendants and was under each Institutional Defendant's direct supervision, employ, and control when he committed the wrongful acts alleged herein.

53. The Institutional Defendants negligently retained Msgr. Garcia with knowledge of Msgr. Garcia's propensity for the type of behavior which resulted in Plaintiff's injuries in this action. The Institutional Defendants failed to investigate Defendant Msgr. Garcia's past and/or current history of sexual abuse and, through the exercise of reasonable diligence, should have known of Defendant Msgr. Garcia's propensity for child sexual abuse. The Institutional Defendants should have made an appropriate investigation of Msgr. Garcia and failed to do so. An appropriate investigation would have revealed the unsuitability of Msgr. Garcia for continued employment and it was unreasonable for the Institutional Defendants to retain Msgr. Garcia in light of the information they knew or should have known.

54. The Institutional Defendants negligently retained Defendant Msgr. Garcia in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had the Institutional Defendants taken reasonable care.

55. In failing to timely remove Msgr. Garcia from working with children or

terminate the employment of Msgr. Garcia, the Institutional Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

56. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of the Institutional Defendants in the retention of its employees.

#### **PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

#### **JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable. Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.



Dated: August 14, 2019  
New York, New York

/s/ Jeffrey R. Anderson  
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J. Michael Reck  
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